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DEPARTMENT OF THE TREASURY
Baltimore District

PERSON TO CONTACT: [REDACTED]

CONTACT TELEPHONE NUMBER: [REDACTED]

IN REPLY REFER TO: [REDACTED]

DATE: SEP 14 1998

CERTIFIED MAIL

Dear Sir

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code and have determined that you do not qualify for tax exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The information submitted indicates that you were incorporated in [REDACTED] on [REDACTED]. Your charter states that your purposes are to carry out the duties and functions as are set forth in the Declaration of Protective Covenants, Conditions and Restrictions of [REDACTED] to operate without profit for the sole and exclusive benefit of its members; to purchase, lease, hold, sell, mortgage or otherwise acquire or dispose of, real or personal property, except to the extent restricted hereby; to enter into, make, perform or carry out contracts of every kind with any person, firm, corporation, association or other entity; to do any and all acts necessary or expedient for carrying on any and all of the activities and pursuing any and all of the objects and purposes set forth in the Articles of Incorporation and not forbidden by the laws of [REDACTED]; to fix, collect and enforce assessments to be levied against property to defray expenses and the cost of effectuating the objects and purposes of the Association and to create reasonable reserves for such expenditures and to authorize its Board of Directors, in its discretion, to enter into agreements with mortgage companies and other organizations for the collection of such assessments; to charge receipts for service rendered by the association and any user for any use of Association property when such is deemed appropriate by the Board of Directors of the Association; to pay taxes and other charges, if any, on or against property owned or accepted by the Association; in general, to have all powers conferred upon a corporation by the laws of [REDACTED] except as prohibited herein.

Income to your organization is from cost reimbursements by association members for road maintenance. Activities conducted by your organization include maintaining a road, enforcing protective covenants and restrictions, having an annual meeting and collecting funds for operations.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]	[REDACTED]				
Date	[REDACTED]	[REDACTED]	[REDACTED]				

Your organization has [redacted] members and membership is required by all purchasers in the development. Your organization consist of [redacted] rural lots and does not represent a governmental unit or a tax district. Your organization maintains a dirt road which is intended to be private, and has placed a no trespassing sign on the road to stop the public from entering. Your organization also maintains a 60' ingress/egress easement which is also closed to the general public.

Section 501(c)(4) of the Code provides for the recognition of civic leagues, social welfare organizations, or other organizations, not organized for profit, but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Federal Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated for the purpose of bringing about civic betterment and social improvements.

In Commissioner v. Lake Forest, Inc., 305 F. 2d 814 (1962), the Court held that an organization was not organized exclusively for the promotion of social welfare when its activities partake largely of the nature of an economic and private cooperative undertaking. The Court also stated that an organization seeking tax exemption under section 501(c)(4) must bring itself within the terms of the statute granting exemption to claim the benefit it affords. The Court then explained that the organization's activities, while available to all citizens eligible for membership, were not benefits municipal or public in nature. Nor were they bestowed on the community as such.

In this case the organization is operated primarily for the private benefit of members and any benefits to the community are not sufficient to meet the requirement of the regulations that the organization be operated primarily for the common good and general welfare of the people of the community. The organization herein is a private cooperative enterprise for the economic benefit or convenience of its members.

Revenue Ruling 72-102, published in Cumulative Bulletin 1972-1, on page 149, states that a nonprofit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks and common areas for use of residents is exempt under 501(c)(4). Membership is required of all owners of real property in the development and assessments are levied to support the organizations activities. It was held that by maintaining the property normally maintained by a municipal government, the organization served the common good and general welfare of the community.

Revenue Ruling 74-99, published in Cumulative Bulletin 1974-1, on page 131, modified Revenue Ruling 72-102 by stating guidelines under which a homeowners' association could qualify for exemption under section 501(c)(4) of the Code. One guideline is that a homeowners' association must serve a community which bears a reasonable recognizable relationship to an area identified as governmental in order to qualify under section 501(c)(4).

This ruling reads in part: "A community within the meaning of section 501(c)(4) and the regulations is not simply an aggregation of homeowners bound together in a structural unit formed as an integral part of a plan for the development of a real estate division and the sale of homes therein. Although an exact delineation of the boundaries of a "community" contemplated by section 501(c)(4) is not possible, the term as used in that section has traditionally been construed as having reference to a geographical unit bearing a reasonable recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof."

The area served by your activities is a private residential housing development. Such an area does not constitute a "community" within the meaning of 501(c)(4) and the underlying regulations.

Revenue Ruling 80-63 published in Cumulative Bulletin 1980-1, on page 116, brings out the point that a homeowners' association that does not represent a community cannot restrict the use of its facilities and areas and be tax exempt under section 501(c)(4).

Revenue Ruling 74-99 states that "...Revenue Ruling 72-102 was intended only to approve ownership and maintenance by homeowners' associations of such areas as roadways and parklands, sidewalks and street lights, access to or for the use and enjoyment of which is extended to members of the general public, as distinguished from controlled use or access restricted to the members of the homeowners' associations.

Examples of common areas are roads, sidewalks, street lights and parklands. You restrict the use of your common areas to your members who own or rent lots in the development. Access to or the use and enjoyment of the common areas is not extended to the general public. Your common areas are for the private use of the members of your organization.

Based on the information submitted, we have determined that your organization is operating in essentially the same manner as the organization described in Revenue Ruling 74-99 and therefore we hold that you are primarily organized and operated to provide services for the personal benefit of your members and not primarily for promoting in some way the common good and general welfare of the community. Any benefits to the community are not sufficient to meet the requirement of the regulations that the organization be operated primarily for the common good and general welfare of the people of the community.

One of the purposes of Revenue Ruling 74-99 is to preclude recognition of exemption of homeowners' associations that serve private rather than public interests. Your services do not benefit a community because they are limited to the members of your housing development.

Your attention is called to section 528 of the Internal Revenue Code which was added by the Tax Reform Act of 1976. This section provides that, in certain circumstances, a non-exempt homeowners' association may elect not to be taxed on its "exempt function income" which includes membership dues, fees or assessments from owners of real property. The election is made by filing Form 1120H. If you determine that your organization qualifies under section 528, you may find it beneficial to make this election.

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code. In accordance with this determination, you are required to file Federal income tax returns on Form 1120.


If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination on this matter.

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,


Paul M. Harrington
District Director

Enclosure: Publication 892